

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAFAEL A. JOSEPH,
Plaintiff,
v.

JOHN E. POTTER,
Defendant.

No. C06-05636 MJJ

**ORDER DISMISSING CASE AND
DENYING MOTION FOR
CONTINUANCE AS MOOT**

Before the Court is Plaintiff Rafael A. Joseph's ("Plaintiff") Motion for Continuance.¹ For the following reasons, the Court **DENIES** the motion as moot and **DISMISSES** the case.

Plaintiff filed a complaint in this Court on September 14, 2006, against Defendant Postmaster General John E. Potter ("Defendant") for a variety of claims related to his employment. Pursuant to Title VII, Plaintiff alleged a hostile work environment, retaliation for prior complaints, harassment, loss of pay and discrimination on the basis of race, sex and national origin. (Complaint at ¶¶ 4-6.) Additionally, he alleged a breach of contract by "the union." (*Id.*) Defendant filed a Motion to Dismiss on April 10, 2007. On June 20, 2007, this Court dismissed without leave Plaintiff's Title VII claims.² Furthermore, the Court dismissed Plaintiff's breach of contract claims against Defendant because Plaintiff failed to allege the existence of a contract with Defendant. However,

¹ Docket No. 22.


² The Court concluded it lacked subject matter jurisdiction over Plaintiff's Title VII claims as Plaintiff failed to exhaust administrative remedies.

1 the Court granted Plaintiff leave to amend his breach of contract claim so he could plead additional
2 facts, and/or join additional parties, that give rise to a valid breach of contract claim. (Docket No. 21
3 at 9:5-10.) Specifically, the Court ordered Plaintiff to file his First Amended Complaint ("FAC"), if
4 any, within twenty days of service of the June 20, 2007 order. Plaintiff filed what appears to be a
5 Motion for Continuance on July 5, 2007, asking for an additional 30 days from July 10, 2007 to file
6 a FAC. However, more than three months later, and well past even the extension that Plaintiff
7 requested, Plaintiff has still failed to file a FAC..

8 Because Plaintiff has failed to file a FAC within the deadline originally established by the
9 Court's June 20, 2007 order, as well as within the extended deadline sought in his request for a
10 continuance, the Court **DENIES** the pending Motion for Continuance as moot and **DISMISSES** the
11 case. The Clerk is **DIRECTED** to close the file.

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13 **IT IS SO ORDERED.**

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16 Dated: November 6, 2007



MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE